

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
Residential Capital, LLC, *et al.* : Case Numbers: 12-12020-MG
: Jointly Administered
Debtors. :

**CREDITORS RESPONSE TO DEBTORS'
FIFTIETH OMNIBUS OBJECTIONS TO CLAIMS
(NO LIABILITY BORROWER CLAIMS - BOOKS and RECORDS)**

**TO THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE**

NOW COME, NEVILLE EVANS and MARIBETH EVANS (Creditors"), by and through their attorney, James B. Blackburn, Jr. Of Wiseman, Blackburn & Futrell and respond to Debtors' Fiftieth Omnibus Objections to Claims ("The Objection")and show that as to their claims Debtors' Objection should be denied. In support of said denial, Claimants show:

1.

Creditors timely filed their Proof of Claim on November 16, 2012 and are listed as claims 5267 and 5272 in the cases of Residential Funding Company, LLC and Homecomings Financial, LLC, respectively. A copy of the Proof of the Claim is annexed hereto as Exhibit "A".

2.

The Debtors stated basis for its objection claim numbers 5267 and 5272 is that it is a no liability borrower claim based upon the Debtors examination of its books and records.

3.

On April 3, 2008, an action was filed by Neville and Maribeth Evans in the Superior Court of Chatham County, Georgia against Debtors, Residential Funding Company, LLC and Homecomings Financial, LLC, along with others, a copy of same is attached to the Proof of Claim filed as part of Exhibit "A". Extensive discovery took place in that case and the Debtors even filed Third-Party Claims against other Defendants. This Creditor and the

Debtors took extensive discovery, which clearly showed that Debtor Homecomings as servicer for Debtor Residential Funding had consistently misapplied the payments on Creditors' loan.

4.

It is important to note, that this loan was originally set up as a "piggyback" loan in order to avoid the requirement for mortgage insurance. Both loans were owned by Residential Funding and serviced by Homecomings. Homecomings repeatedly applied payments made on the first mortgage loan to the second mortgage loan. It then cause the Creditors property to be foreclosed upon because of a claimed delinquency in the first mortgage. Debtors books and records clearly show that they applied payments on the first mortgage to the second mortgage.

5.

Debtors' claim that they have disallowed this claim as a wrongful foreclosure claim because they have determined they do not have any liability regarding the claim, because they have determined that they foreclosed properly and took appropriate loss mitigation steps, that there was no evidence of identity theft or that their reason for denying Claimants short sale request was appropriate. None of these claims are true. Debtors ran rough shod over these Claimants and foreclosed upon them when their loan was not in default. Debtors' books and records produced during discovery show that Debtors received payment and misapplied payment and took action against these Debtors based solely on, on their failure to keep their books properly.

6.

This Creditor is at a great disadvantage in this action because it does not have the resources of Debtor. Creditors Evans fulfilled all of their obligations under the contract documents, but were deprived of their property by wrongful foreclosure sale. The Debtors ignored all notices as did their attorneys. The Debtors caused substantial and irreparable harm to this Creditor and did so in bad faith.

7.

The Debtors acted in bad faith and their bad faith should not be rewarded by this Court. The bankruptcy laws of this nation are designed to protect a Debtor which can not meet its obligations while acting in good faith.

8.

Debtors Homecomings and Residential Funding Company, LLC were unjustly enriched by the sale of this Creditors property, which they obtained by wrongful foreclosure. Now, Debtors rely on the same negligently maintained books and records to try to disallow Creditors claim, that they relied to wrongfully foreclose and create Creditors claim.

9.

Despite Debtors claims about what their books and records show, Debtors actively litigated Creditors' claims for four (4) years and even paid attorneys' fees under this Chapter 11 for their defense of Creditors claims. Debtors were unable to get any of the claims dismissed or otherwise adjudicated in their favor during said time period and were ordered to mediation by the Court with jurisdiction at about the same time as they applied for relief with this Court.

10.

Debtors were unjustly enriched after wrongfully foreclosing because they made a profit when selling the real estate they had wrongfully obtained.

11.

Debtors also made adverse reports to credit bureaus concerning this Creditor's payment history and default. Despite demand, Debtors have refused to correct said false reports.

12.

This Creditor has been put through great trouble and expense and Debtor now proposes to short change this Creditor while paying its executives, its lawyers and its consultants far more than it owes this Creditor. It is the Court's and Trustee's duty to protect the unsecured Creditors and this Creditor requests such protection.

WHEREFORE, these Creditors pray that its claims not be disallowed and that the Court consider their objection to the Fiftieth Omnibus Objections to Claims and sustain same allowing Creditors' claim in full.

Dated: Savannah, Georgia
October 23, 2013

Respectfully submitted,

WISEMAN, BLACKBURN & FUTRELL

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: **Jointly Administered**
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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing on the following counsel or parties:

The Honorable Martin Glenn
Judge, U.S. Bankruptcy Court
Southern District of New York
One Bowling Green - Courtroom 501
New York, NY 10004

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This is to certify that I have on this day served all the parties in this case in accordance with the Notice of Electronic
Filing ("NEF") which was generated as a result of electronic filing in this court.

This 23rd day of October, 2013.

Respectfully submitted,

WISEMAN, BLACKBURN & FUTRELL

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